THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.7159 of 2001

Date: 22.08.2007

Between:

Dr. M. Venkata Reddy, S/o.Narayana

..... PETITIONER

AND

1. The Director, Indian Medicine & Homeopathy, Andhra Pradesh, Hyderabad and two others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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ORDER:

It is stated that the petitioner, who was appointed as a Rural Medical Practitioner on 27.01.1968, was selected as Rural Medical Practitioner (A Class) by the District Selection Committee on 20.11.1978 and was posted to Nossam under the control of Panchayat Samithi, Koilkuntla, through proceedings in Rc.No.A5/4365/78, dated 14.05.1979, issued by the Chief Executive Officer, In Charge, Zilla Parishad, Kurnool. Accordingly, he worked as a Rural Medical Practitioner in Kanala Rural Dispensary of Koilkuntla. Thereafter, he worked under the control of the third respondent. It is also stated that in order to provide medical facilities to the rural public, the Government encouraged the Rural Medical Practitioners by paying honorarium to them. Accordingly, he was paid subsidy amount up to October, 1995. Thereafter, he has not been paid the honorarium on the ground that the subsidy has not been provided. The representations made by the petitioner have not evoked any response. Hence, he invoked the *mandamus* jurisdiction of this Court under Article 226 of the Constitution of India for issuing a direction to the respondents by declaring their actions in not paying the honorarium for his service rendered from November, 1995 till date, as illegal and arbitrary and for appropriate orders.

Pending the writ petition, a direction was sought to pay the honorarium at least from the current month i.e., January, 2001 and continue to pay the same pending disposal of the writ petition. But, the same was rejected by this Court.

The third respondent, the Mandal Parishad Development Officer, Sanjamala, Kurnool District filed a counter-affidavit admitting that the

petitioner was selected as a Rural Medical Practitioner on 04.07.1985 as per the orders of the Chief Executive Officer, Zilla Parishad, Kurnool, dated 14.05.1979 and was posted as R.M.P. Nossam of Koilkuntla Panchayat Samithi. It is also that the petitioner has been working at Kanala as Rural Medical Practitioner and that the third respondent is the supervising authority. It is also stated that subsidy has been released by the second respondent up to October, 1995. Thereafter, the subsidy has not been released since he was not working at Kanal Rural Dispensary w.e.f. October, 1995. The representation alleged to have been made by the petitioner is not available in their records. It is further stated that the statements of the Sarpanch of Kanal Village and the Vice President of the Mandal Parishad also go to show that the petitioner is not working in the Rural Dispensary since 1995, due to which, the subsidy has not been released. The honorarium has been paid to the petitioner up to October, 1995. The Mandal Parishad Development Officer, Koilkuntla has altered the date of birth of the petitioner from 12.05.1934 to 01.04.1946 in the service register. If the date of birth recorded in the service register i.e., 12.05.1934 is taken into consideration the petitioner will be retired on 31.05.1992 on attaining the superannuation. But, the Mandal Parishad Development Officer, Koilkuntla has changed the date of birth of the petitioner without obtaining the permission of the Government.

A reply affidavit has been filed by the petitioner along with the Xerox copies of the service certificates issued by the third respondent, dated 30.07.1998 and 01.05.1998, which show that the petitioner was working up to 30.07.1998. In the reply-affidavit, it is stated that he worked as A-Class Rural Medical Practitioner till 31.03.2004 i.e., the date of superannuation, as per the altered date of birth effected in the service register. He was paid honorarium up to October, 1995 only and thereafter he has not been paid the same though he worked up to 31.03.2004. The date of birth of the petitioner was altered, as per the school record, after following the procedure mentioned in G.O.Ms.No.125, Finance & Planning (Fin.Wing.FRI) Department, dated

21.04.1984. Therefore, the respondents cannot dispute the correction of date of birth in the service register.

Heard the learned counsel for the petitioner. None appears for the third respondent, though counter-affidavit has been filed.

It is not in dispute that the service register of the petitioner was opened in the year 1968 i.e., prior to issuance of the Andhra Pradesh Public Employment (Recording & Alteration of Date of Birth) Rules, 1984 (for short 'the Rules') issued in G.O.Ms.No.165, Finance & Planning Department, dated 21.04.1984.

Rule 2 of the said Rules provides for recording of the date of birth of the employee**,** who has been appointed before the commencement of the Rules.

Rule 3 of the Rules envisages procedure in recording the date of birth of the employees appointed before the commencement of the Rules and whose service register has not been opened, shall be recorded in the manner laid down in the Rule.

Rule 4 of the Rules prescribes alteration of date of birth in past cases, which reads as under:

> "No Government employee in service, before the commencement of these rules:-
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> (a) whose date of birth has been recorded in the Service Register in accordance with the rules applicable to him; or
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> (b) whose entry relating to date of birth became final and binding under the rules in force prior to the commencement of these rules, shall be entitled to claim alteration of his date of birth."

The date of birth as determined and entered in the service record prior to the above Rule coming into force shall not be altered except in the case of *bona fide* clerical error under the order of the Government as per Sub Rule (5) of Rule 2 of the Rules.

Therefore, the Mandal Parishad Development Officer has no jurisdiction to alter the date of birth once entered in the service register prior to the issuance of G.O.Ms.No.165, 21.04.1984 .

It is well settled that the illegal order passed by the authorities

cannot be legalized in exercise of the *mandamus* jurisdiction. Once the date of birth of the petitioner altered by the Mandal Parishad Development Officer from 12.05.1934 to 01.04.1946 is contrary to the Rules and without jurisdiction. It is not open for the petitioner to contend that he is entitled to continue in service till the date of attaining of superannuation as per the corrected date of birth and is entitled to remuneration. Even according to the counter-affidavit, the petitioner worked up to October, 1995, though he should have been retired on 31.05.1992 and he was paid the honorarium till October, 1995.

The Xerox copies of the service certificates produced by the petitioner along with the reply affidavit without there being any pleading to the said effect in the writ petition, this Court cannot presume that he worked till the date of issuance of certificate. It is for the authorities to verify the record and the genuineness of the certificates issued by the Mandal Parishad Development Officer, dated 30.07.1998 and 01.05.1998.

In view of the same, the petitioner is directed to file appropriate representation to the Mandal Parishad Development Officer with the original service certificates of the above Xerox copies, within a period of two weeks from the date of receipt of a copy of this order, evidencing that he worked till the date of issuance of the above certificate. The Mandal Parishad Development Officer is also directed to verify the same and pass appropriate orders about the entitlement of the petitioner to the honorarium for the period for which he worked.

With the above directions, the writ petition is disposed of. There shall be no order as to costs.

A. GOPAL REDDY, J

Date: 22.08.2007

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